



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

John J. White, Jr., Esq.  
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121 Third Avenue, P.O. Box 908  
Kirkland, Washington 98083-0908

NOV - 6 2008

RE: MUR 5954  
Friends of Dave Reichert and  
Paul Kilgore, in his official  
capacity as treasurer

Dear Mr. White:

On November 28, 2007, the Federal Election Commission ("the Commission") notified your clients, Friends of Dave Reichert and Paul Kilgore, in his official capacity as treasurer ("the Committee"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On October 29, 2008, the Commission found, on the basis of the information in the complaint, and information provided by your clients, that there is no reason to believe the Committee violated 2 U.S.C. § 441a(f) or 11 C.F.R. §102.17(c). Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Audra L. Wassom".

Audra L. Wassom  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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# FEDERAL ELECTION COMMISSION

## FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Friends of Dave Reichert and MUR 5954  
Paul Kilgore, in his official capacity  
as treasurer, and Representative  
Dave Reichert

### I. FACTUAL BACKGROUND

This matter arises from a complaint alleging that the Friends of Dave Reichert and Paul Kilgore, in his official capacity as treasurer ("FDR"), violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to comply with the accounting and reporting requirements for conducting joint fundraising activities in connection with an August 27, 2007 reception honoring Representative Dave Reichert. *See* 11 C.F.R. § 102.17. The complaint also asserts that Representative Dave Reichert violated 2 U.S.C. § 441i(e) by soliciting and raising contributions that were in excess of federal limits. Finally, the complaint alleges that Friends of Dave Reichert accepted an excessive contribution from Lee Ann Farrell in connection with the August 27th event. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f).

The Reichert Washington Victory Committee ("RWVC") is a joint fundraising committee formed pursuant to 11 C.F.R. § 102.17 by FDR and the Washington State Republican Party ("WSRP"). *See* Statement of Organization, dated August 8, 2007. As such, the RWVC established a separate depository account used solely for receiving federally permissible contributions and distributing net proceeds to its participating committees, FDR and WSRP. *Id.*; 11 C.F.R. § 102.17(c)(3)(i). On August 27, 2007, the RWVC hosted a fundraising reception honoring Reichert and featuring President George W. Bush. The invitation invited recipients to

purchase, by check made payable to the RWVC or by credit card, VIP reception tickets for \$10,000 (given or raised) or “attendee” tickets for \$1,000.

The invitation also included a disclaimer outlining the allocation of funds raised in connection with the event.<sup>1</sup> In pertinent part, this disclaimer stated that fundraising proceeds would be distributed to FDR “to the extent permitted by” the Act and any remaining funds would be transferred to the WSRP’s federal account. According to the disclaimer, funds constituting excessive or prohibited contributions under the Act would be refunded. Invitees were also informed that, notwithstanding the allocation formula, they were free to designate their contribution to either participant. Further, the disclaimer stated that the allocation formula was subject to change in the event contributions were received that exceeded the amount a contributor could give to either participant under federal law.

Invitation recipients made credit card contributions to the subject event through the RWVC’s website or by telephone. According to FDR’s Finance Director Eric Yates, FDR believed that credit card contributions to the joint fundraising event could be electronically processed using FDR’s merchant number and then routed into the RWVC’s account. However, due to what the response describes as a “miscommunication,” these credit card contributions were electronically deposited directly into FDR’s account instead of the joint fundraising committee’s account. Apparently, FDR discovered after the event that a coding error on the RWVC’s webpage prevented credit card contributions from being automatically transferred into

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<sup>1</sup> All participants in joint fundraising events must enter into a written agreement that identifies the fundraising representative and sets out the formula for allocating proceeds. 11 C.F.R. § 102.17(c)(1). Although the written agreement need not be filed with the Commission, it must be retained by the fundraising representative for at least three years and made available to the Commission on request. *Id.* The participants are also to use the formula to allocate the expenses incurred in fundraising. 11 C.F.R. § 102.17(b)(3)(i).

the RWVC's account. Further, because the processing company had placed the funds into a "suspense" account, funds could not be manually released into the joint fundraising account. According to Yates, the bank informed FDR that the funds could only be released into an account associated with the merchant identification number, which meant that the joint fundraising proceeds had to be released into FDR's account. As a result, FDR deposited a total of \$93,600 of these credit card contributions into its account and reported them as direct contributions in its 2007 October Quarterly Report. The 2007 October Quarterly Report reflects the receipt of these contributions from twelve (12) individuals as well as the refund of \$44,600 in excessive contributions to these same individuals.<sup>2</sup>

Lee Ann Farrell was one of the twelve individuals whose credit card contribution was routed into FDR's account. Farrell contends that she made a \$13,000 credit card donation to RWVC in response to an invitation to the August 27, 2007 event. Farrell states that at the time she made her telephone contribution she understood "that the contribution was within the amount legally permitted to be made in connection with the President's visit." After all of Farrell's contribution was unintentionally deposited into FDR's account, FDR informed Farrell that her contribution was in excess of the amount she was legally entitled to contribute to the committee. Within twenty-four hours, FDR issued Farrell a refund in the amount of \$8,400.<sup>3</sup> Several weeks later, FDR issued an additional \$1,000 refund to Farrell from her August 2007 contribution after realizing that she had made a \$1,000 contribution to the campaign in March 2007.

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<sup>2</sup> It appears that FDR began the process of arranging for a majority of these refunds prior to the actual release of funds into its account. FDR's 2007 October Quarterly Report indicates that seven (7) of the refunds were made prior to the date the contributions were reported as having been received by the committee.

<sup>3</sup> The day after receiving this refund, Farrell contributed \$8,400 to RWVC, which committee in turn transferred that same amount of money to WSRP.

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The complaint alleges that the FDR failed to accurately account for and report contributions raised in connection with the August 27, 2007 event honoring respondent Reichert and featuring President George W. Bush in violation of 11 C.F.R. § 102.17. According to the complaint, FDR admitted that some of the contributions raised at the event were handled in violation of this regulation when it issued a statement that it had raised more funds at the subject event than was reported by the RWVC, which was specifically established to receive all contributions associated with the event. In this press statement, FDR states that the credit card application used in processing contributions deposited money into the wrong account resulting in electronic overpayments to FDR.

The respondents deny violating the Act in connection with the subject fundraising event and assert that the RWVC accounted for all contributions it received and accurately reported all receipts and expenses. While acknowledging that joint fundraising receipts were mistakenly deposited into FDR's account, the respondents contend that FDR appropriately reported all direct contributions it received in connection with the joint fundraising solicitation, including the funds deposited as a result of the processing error described *supra* at 2 and 3. According to Yates, because FDR "actually" received the credit card contributions, those funds became reportable contributions by that committee as opposed to the RWVC. Further, the response asserts that, although those contributions to FDR were excessive, FDR arranged for refunds within the statutory period.

The complaint also alleges that Reichert raised funds outside the statutory limits and that FDR accepted excessive contributions from Lee Ann Farrell in violation of the Act. *See* 2 U.S.C. §§ 441i(e) and 441a(f). The response does not address the allegation that Reichert

violated 2 U.S.C. § 441i(e) in connection with the contributions raised through the subject event, but denies that FDR accepted excessive contributions from Farrell. The respondents state that the \$13,000 Farrell gave in response to the joint fundraising solicitation was well within the Act's contribution limits because she was entitled to contribute a total of \$4,600 (\$2,300 per election) to FDR and \$10,000 to a state party committee. *See* 2 U.S.C. § 441a(a)(1)(A) and (D); 11 C.F.R. § 110.1(b) and (c)(5). Further, the respondents note that pursuant to the event invitation's disclaimer, the only amounts due to be allocated to FDR were within the available contribution limits. *Id.* Finally, the respondents assert that even if Farrell's contribution in response to the subject event solicitation is considered an excessive contribution to FDR due to its processing error, the excessive portion of the contribution was returned to her within the sixty days permitted for refunding excess contributions. *See* 11 C.F.R. § 103.3(b)(3).

## **II. LEGAL ANALYSIS**

### **A. ALLEGED VIOLATIONS OF THE JOINT FUNDRAISING REGULATIONS**

Commission regulations stipulate that joint fundraising representatives, such as the RWVC, are responsible for collecting contributions, paying costs, distributing the proceeds of the joint endeavors, and for satisfying the recordkeeping and reporting responsibilities of political committees. 11 C.F.R. § 102.17(b)(1). The fundraising representative is also required to establish a separate account into which all joint fundraising receipts are to be deposited within 10 days of receipt and from which all disbursements are to be made. 11 C.F.R. § 102.17(c)(3)(i) and (ii).

The complaint alleges that FDR violated the Act by failing to comply with the rules for conducting joint fundraising activities in connection with the August 27, 2007 event. As

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discussed above, it is the joint fundraising representative, as opposed to the participating committees, who is accountable under Commission regulations for the collection and deposit of joint fundraising proceeds. 11 C.F.R. § 102.17(c). Thus, FDR as a participating committee, is not legally responsible for the failure to appropriately deposit \$93,600 in joint fundraising proceeds into the RWVC's account. Therefore, the Commission finds no reason to believe that Friends of Dave Reichert and Paul Kilgore, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) in connection with this matter.

**B. ALLEGED VIOLATION OF 2 U.S.C. § 441i(e)**

The complaint alleges that respondent Reichert violated 2 U.S.C. § 441i(e) by raising contributions from respondent Lee Ann Farrell and others that exceeded the Act's contribution limitations.<sup>4</sup> Federal officeholders and candidates are prohibited from soliciting, receiving, directing, transferring or spending funds in connection with either federal or non-federal elections, unless the funds comply with federal contribution limits and source restrictions. 2 U.S.C. § 441i(e)(1)(A) and (B); 11 C.F.R. §§ 300.61 and 300.62. Specifically, federal officeholders and candidates, such as Reichert, may not raise funds in connection with federal elections that exceed the applicable limits and prohibitions.

Based on the solicitation at issue as well as the available evidence, it does not appear that Reichert violated 2 U.S.C. § 441i(e). The evidence indicates that the invitation to this event was expressly limited to soliciting federally permissible funds for FDR with the remainder going to WSRP's federal account (which could accept up to \$10,000 in any calendar year). 2 U.S.C.

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<sup>4</sup> The complaint does not specifically identify or discuss the other eleven (11) contributors whose credit card contributions to the RWVC were also deposited into FDR's account.

§ 441a(a)(1)(D) and 11 C.F.R. § 110.1(c)(5). In pertinent part, the disclaimer affixed to the bottom of the invitation states,

[j]oint fundraising proceeds will be allocated as follows: Funds will be distributed to Friends of Dave Reichert to the extent permitted by the Federal Election Campaign Act of 1971, as amended ("the Act") (maximum of \$2,300 per individual per election and a maximum of \$5k per federal multi-candidate political action committee per election). In the event funds remain that would constitute an excessive contribution to the campaign, such funds shall go to the WSRP federal account. In the event funds remain that would constitute an excessive or prohibited contribution under the Act, such funds shall be refunded.

Accordingly, because the solicitation for the subject event was expressly and entirely limited to amounts that complied with the Act, the Commission finds no reason to believe that Representative Dave Reichert violated 2 U.S.C. § 441i(e).

**C. ALLEGED VIOLATIONS OF 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f)**

The complaint alleges that FDR accepted an excessive contribution from respondent Farrell in connection with the August 27, 2007 event. *See* 2 U.S.C. §§ 441a(a)(1)(A) and 441a(f). The Act limits individual contributions to a candidate's authorized committee to \$2,300 per election. 2 U.S.C. § 441a(a)(1)(A); *see also* 11 C.F.R. § 110.1(b). Contributions that on their face exceed the Act's contribution limits may be either deposited into a campaign depository or returned to the contributor. If any such contribution is deposited the treasurer may request redesignation or reattribution of the contribution by the contributor. If a redesignation or reattribution is not obtained, the treasurer is required to refund the contribution to the contributor within sixty (60) days of receipt. 11 C.F.R. § 103.3(b)(3).

The available evidence in this matter does not support a finding that FDR accepted an excessive contribution. Farrell was entitled to make a total of \$4,600 in contributions to FDR for the primary and general elections and a \$10,000 annual contribution to the WRSP. 2 U.S.C.

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§ 441a(a)(1)(A) and (D); 11 C.F.R. § 110.1(b) and (c)(5). As described *supra* at 3 and 4, Farrell received an invitation to the subject fundraising event and responded by making a \$13,000 credit card contribution. Due to the previously described miscommunication, the entire amount of her contribution to the joint fundraising committee was deposited into FDR's account. It appears that FDR immediately informed Farrell what had occurred and within twenty-four hours refunded \$8,400 out of the \$13,000 she contributed to the joint fundraising committee. FDR also refunded an additional \$1,000 on October 16, 2007 once it realized Farrell had made a \$1,000 contribution to the campaign in March of 2007. It appears FDR retained \$4,600 out of Farrell's \$13,000 contribution with her approval, which was the maximum amount that Farrell could contribute to the candidate committee.

Therefore, while FDR initially received an excessive contribution from Farrell in the amount of \$13,000, it remedied the matter by refunding the excessive portion of the contribution in a timely manner. 11 C.F.R. § 103.3(b)(3). Accordingly, the Commission finds no reason to believe that Friends of Dave Reichert and Paul Kilgore, in his official capacity as treasurer, violated 2 U.S.C. § 441a(f).